THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.21838 of 2006

Dated:20.12.2006

BETWEEN:

R.Chinnaswamy Naidu.

... Petitioner

and

Govt.of A.P., and others.

... Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.21838 of 2006

ORDER:

This Writ Petition is filed assailing the order of the first respondent vide Memo No.3579/M.II(1)/2005-4, dated 10.03.2006, whereunder, in exercise of their powers under Rule 35-A of the Andhra Pradesh Minor Mineral Concession Rules, 1966 (for short 'the Rules'), the first respondent disposed of the revision petition filed by the petitioner modifying the order of the third respondent, dated 22.12.2003, passed under Rule 26(3)(ii) of the Rules.

The petitioner is either Partner or Proprietor of M/s.Bindu Granites, M/s.G.K.Granites and M/s.Bhagawan Granites. These three concerns were granted mining leases for black granite. It appears, the Regional Vigilance and Enforcement Officer, Tirupati, along with the third respondent inspected the petitioner's quarry in Survey Nos.60 and 53 of Yerramrajupalli Village of Karvetinagaram Mandal in Chittoor District, and assumed that the petitioner illegally quarried 350 M3 of granite. Based on the report of the Vigilance, the third respondent issued a show cause notice dated 28.08.2003 demanding a sum of Rs.43,75,000/-, being normal seigniorage fee and five times penalty on the seigniorage fee. The petitioner did not submit any explanation. The third respondent passed orders and directed the petitioner to pay a normal seigniorage fee, being Rs.4,37,500/-, and penalty, totalling Rs.43,75,000/-. The petitioner assailed the same before the first respondent under Rule 35-A of the Rules.

The third respondent has filed a counter affidavit opposing the Writ Petition and alleging that apart from illegally quarrying the area in

Survey Nos.53 and 60 of Yerramrajupally Village, the petitioner has transported black granite blocks, and therefore, action taken by the third respondent under Rule 26 of the Rules is sustainable.

Learned Counsel for the petitioner submits that the third respondent passed orders without proper application of mind and without having all the details before passing the order on 22.12.2003. Nextly, he contends that the first respondent has passed orders without considering all the material and that order is passed without giving valid reasons, and therefore, the impugned order is unsustainable.

After hearing the learned Counsel for the petitioner and the learned Assistant Government Pleader for Industries, this Court is of considered opinion that the impugned order of the Government, dated 10.03.2006, is wholly unsustainable for the reason that there is no consideration of the revision petition and no reasons are recorded. While disposing of the revision application of the petitioner, the Government observed as under.

> The Revision Application filed by Sri R.Chinna Swamy Naidu, has been examined by Government in detail in consultation with the Director of Mines and Geology and in order to dispose of the Revision Application, a personal hearing has been conducted on 22.10.2005. The Revision Petitioner has attended the hearing and put forth his grievances. During the hearing while reiterating the same grounds submitted in Revision Application, the Petitioner requested the revision authority to waive the Penalty. After hearing the Revision Applicant and taking the opinion of Departmental officials, with regard to rule position in this case, Government, by exercising the powers conferred under Rule 35-A of APMMC Rules, 1966, hereby, decided to reduce the penalty from 5 times to 2 times, i.e., the appellant has to pay Normal Seigniorage Fee + 2 times penalty. The Revision Application is disposed of accordingly.

There cannot be any doubt that the power vested under Rule 35-A of the Rules is quasi judicial power. Therefore, the quasi judicial authority has to consider all the aspects, formulate points for consideration and examine each point considering the pleas and evidence in support of such pleas. Except stating that Government decided to reduce the penalty after hearing the revision applicant taking the opinion of the Departmental Officials, no reasons are mentioned. This exercise of revisional power is therefore, not in accordance with law.

On this reason alone, the order of the Government dated 10.03.2006 and the consequential Demand Notice dated 31.07.2006 are set aside. The matter is remitted to the first respondent to consider the revision petition of the petitioner dated 04.03.2005 after giving

opportunity to the petitioner, and pass a reasoned order within a period of eight weeks from the date of receipt of a copy of this order.

The Writ Petition is accordingly disposed of. No costs.

_____

(V.V.S.RAO, J)

20.12.2006

Note: Issue C.C in one week.

B/o.

vs